

**United States Department of Labor
Employees' Compensation Appeals Board**

P.V., Appellant)	
)	
)	Docket No. 15-1147
and)	Issued: June 16, 2016
)	
DEPARTMENT OF AGRICULTURE, FARM)	
SERVICE AGENCY, Clarksburg, MS, Employer)	

Appearances:
Martin Kaplan, Esq., for the appellant
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On April 27, 2015 appellant, through counsel, filed a timely appeal from a January 23, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant met her burden of proof to establish a recurrence of disability on or after August 25, 2014 due to her accepted work-related emotional condition.

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant timely requested oral argument before the Board. 20 C.F.R. § 501.5(b). By order dated April 14, 2016, the Board exercised its discretion and denied the request, finding that the arguments on appeal could adequately be addressed based on a review of the case record. *Order Denying Request For Oral Argument*, Docket No. 15-1147 (issued April 14, 2016). The Board's *Rules of Procedure* provide that any appeal in which a request for oral argument is not granted by the Board will proceed to a decision based on the case record and any pleadings submitted. 20 C.F.R. § 501.5(b).

FACTUAL HISTORY

On March 8, 2011 appellant, then a 42-year-old farm loan program technician, filed an occupational disease claim (Form CA-2) alleging that she sustained stress, anxiety, depression, and fibromyalgia flare-ups related to her work. She indicated that she first became aware of her claimed condition on February 5, 2009 and first realized on December 23, 2010 that it was caused or aggravated by her work. Appellant did not stop work at the time she filed her claim.

In several statements, appellant provided details regarding the incidents and conditions at work which she believed caused her claimed stress-related conditions. She alleged that she was subjected to differential treatment because all the Caucasian employees had a key to the front door of her workplace office, but she did not. Appellant also claimed that she was exposed to differential treatment because, during the interview process for a program technician position for which she was not selected, she discovered that an interviewee inquired whether he could ask her interview questions that would not be asked of the other candidates. She also claimed that she was subjected to harassment and discrimination by supervisors and coworkers on various occasions between early-2009 and early-2011.

In a report dated December 6, 2011, Dr. Richard G. Farmer, a Board-certified psychiatrist serving as an OWCP referral physician, discussed his evaluation of appellant's psychiatric condition and diagnosed major depression (severe with psychotic features) and paranoid personality disorder. In a supplemental report dated January 4, 2012, he determined that appellant's preexisting psychiatric condition was aggravated by work incidents. Dr. Farmer indicated that this aggravation was temporary and had ceased in 2011.

On January 5, 2012 OWCP accepted aggravation of major depression (recurrent episode).³ It found that appellant had established two employment factors, *i.e.*, those relating to her nonreceipt of office keys and the irregularities in the interview and selection process for the program technician position, and that the medical evidence established that these factors contributed to the accepted aggravation of major depression.

Appellant returned to work on August 25, 2014 and stopped the same day. On September 5, 2014 she filed a notice of recurrence (Form CA-2a) alleging that she sustained a recurrence of disability on August 25, 2014 due to her accepted condition, aggravation of major depression (recurrent episode). On the same form appellant's immediate supervisor indicated that appellant reported to work on August 25, 2014, but that upon arrival at the workplace she immediately experienced a panic attack.

In a May 19, 2014 report, Dr. Barry A. Vinick, an attending clinical psychologist, indicated that appellant could return to work on May 21, 2014 and that the restriction on working with two particular employees could be removed. He noted that appellant should be able to work

³ On December 5, 2013 appellant filed an occupational disease claim, developed under a separate claim file (xxxxxx088), alleging that she sustained a work-related emotional condition in the form of anxiety and panic attacks. She noted that she first became aware of her claimed condition on June 28, 2013 and that she first realized on November 18, 2013 that it was caused or aggravated by her employment. In a November 18, 2014 decision, OWCP denied this emotional condition claim because appellant did not establish any compensable employment factors. The Board notes that appellant's December 5, 2013 claim implicates different claimed work factors than the present claim and that her December 5, 2013 claim is not the subject of the present appeal.

with these employees if the employing establishment allowed her to return to work at the Coahoma County office. Dr. Vinick indicated:

“A reassignment relocation to the Bolivar County office will likely continue to exacerbate anxiety, panic, and depression symptoms due to financial and family hardships. In addition, the reassignment/relocation is viewed by [appellant] as retribution and discrimination by the [employing establishment] for prior [Equal Employment Opportunity (EEO)] complaints and investigations which will continue to increase the above-stated mood and anxiety symptoms as well.”

A document containing discharge instructions, including instructions for taking medication, indicates that appellant was treated on May 30, 2014 in the emergency department of the Northwest Mississippi Regional Medical Center by Dr. Markus B. Stanley, an osteopath and Board-certified family practitioner. The document contains the diagnoses of anxiety reaction, adjustment disorder with anxiety, and panic disorder.

In a September 2, 2014 letter, OWCP advised appellant regarding the definition of a recurrence of disability under FECA and requested that she submit additional evidence in support of her recurrence of disability claim. Appellant submitted several administrative documents regarding her job duties.

On September 16, 2014 appellant also filed an occupational disease claim (Form CA-2) alleging a new emotional condition due to her work. Regarding the nature of the disease, she indicated, “Experienced anxiety/panic attacks in the Phillips County Farm Service Agency office on August 25, 2014. I was unable to breathe, think, concentrate, talk, walk, etc.”⁴ Appellant noted that she first became aware of her claimed condition on June 28, 2013 and that she first realized on August 25, 2014 that it was caused or aggravated by her work. OWCP developed this case under a separate claim file (xxxxxx212) and the question of whether appellant sustained a new emotional condition, as alleged in the occupational disease claim filed on September 16, 2014, is also not the subject of the present appeal.⁵

By decision dated October 6, 2014, OWCP denied appellant’s claim for a recurrence of disability on or after August 25, 2014 due to her accepted condition, aggravation of major depression (recurrent episode). Regarding the reasons for denying the claim, OWCP found:

“The evidence of record does not establish the basis for your recurrence because there is no evidence that you sustained a recurrence of disability. Instead, the evidence supports you have simultaneously filed a new claim for an emotional condition under case number [xxxxxx212]. It also appears that there is nothing to show the original work factors were the basis for filing this recurrence or new claim. It appears new factors led to your filing this recurrence, but they are yet to be found as compensable as they are unknown and it remains unclear if they are related to your employment.

⁴ Appellant generally attributed her claimed occupational disease to various incidents and conditions at work, including reassignments/relocations, discrimination, harassment, intimidation, and a hostile work environment.

⁵ Under this separate case file, OWCP denied appellant’s claim for a new occupational disease in a decision dated October 23, 2014.

“Based on these findings, your claim for recurrence is denied because you have not established that you are disabled/further disabled due to a material change/worsening of your accepted work-related conditions due to a recurrence of disability.... [T]his case is closed since there is no current medical information that supports you have residuals from this case or that this temporary aggravation continues at this time in view of the medical evidence on file.”

In a December 2, 2014 letter, counsel, on behalf of appellant, requested reconsideration of OWCP’s October 6, 2014 decision denying the claim for a recurrence of disability beginning August 25, 2014.

In a January 23, 2015 decision, OWCP denied modification of the October 6, 2014 decision. It denied the claim because there was no evidence that appellant had received any recent medical treatment for the accepted conditions. It noted: “This is not a formal termination of benefits as your attorney states, but rather simply an administrative action on an inactive case as the last medical (other than for the new injury) was in 2012.”

LEGAL PRECEDENT

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of proof to establish by the weight of the substantial, reliable, and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.⁶ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

A recurrence of disability means an inability to work, after an employee has returned to work, caused by a spontaneous change in a medical condition which resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁹ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee’s physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations. A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of

⁶ *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986). Under 20 C.F.R. § 10.5(x), a recurrence of disability is defined, in part, as “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”

⁷ *L.F.*, Docket No. 15-1069 (issued August 12, 2015); *Mary S. Brock*, 40 ECAB 461, 471-72 (1989).

⁸ *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

⁹ 20 C.F.R. § 10.5(x).

misconduct, nonperformance of job duties, or other downsizing or where a loss of wage-earning capacity determination as provided by 5 U.S.C. § 8115 is in place.¹⁰

ANALYSIS

On March 8, 2011 appellant filed an occupational disease claim alleging that she sustained stress, anxiety, depression, and fibromyalgia flare-ups due to incidents and conditions at work. She indicated that she first became aware of her claimed condition on February 5, 2009 and first realized on December 23, 2010 that it was caused or aggravated by her employment. On January 5, 2012 OWCP accepted that appellant sustained aggravation of major depression (recurrent episode). On June 11, 2014 appellant filed a notice of recurrence alleging a recurrence of disability on August 25, 2014 due to this accepted emotional condition. By decisions dated October 6, 2014 and January 23, 2015, OWCP denied appellant's claim for a recurrence of disability on or after August 25, 2014 due to the accepted condition because she had failed to submit sufficient medical evidence to establish such a recurrence of disability.

The Board finds that appellant has not met her burden of proof to establish a recurrence of disability on or after August 25, 2014 due to her accepted condition, aggravation of major depression (recurrent episode).

Appellant submitted a May 19, 2014 report in which Dr. Vinick indicated that she could return to work on May 21, 2014 and that the restriction on working with two particular employees could be removed if she were allowed to return to work at the Coahoma County office of the employing establishment. Dr. Vinick indicated that a reassignment to the Bolivar County office of the employing establishment would likely exacerbate appellant's preexisting anxiety, panic, and depression symptoms. A document containing discharge instructions, including medication instructions, reflected that appellant had been treated on May 30, 2014 by a physician on an emergency basis at the Northwest Mississippi Regional Medical Center. The document contains the diagnoses of anxiety reaction, adjustment disorder with anxiety, and panic disorder.

The Board finds that this medical evidence does not contain a clear opinion that disability on or after August 25, 2014 was due to the accepted condition, *i.e.*, aggravation of major depression (recurrent episode). The Board has held that medical evidence which does not offer a clear opinion regarding the cause of an employee's claimed condition and/or period of disability is of limited probative value on the issue of causal relationship.¹¹ None of the reports submitted by appellant shows that the condition accepted in 2012, which was deemed to be related to two specific employment factors, had spontaneously changed without an intervening injury or new work exposure such that a recurrence of disability occurred on or after August 25, 2014.¹² The Board notes that appellant appears to have implicated new claimed employment factors in causing disability beginning August 25, 2014 and that she filed a separate claim, which is not the subject of the present appeal, alleging the occurrence of such a new work-related emotional condition.

¹⁰ *Id.*

¹¹ *See Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹² *See supra* note 9.

On appeal counsel argues that OWCP could not deny appellant's request for medical treatment by administratively closing her claim file, but must present evidence meeting its burden of proof to terminate entitlement to medical benefits. First, the Board notes that OWCP's denial of appellant's claim in its October 6, 2014 and January 23, 2015 decisions would be more appropriately characterized as a denial of a claim for recurrence of disability than as a claim for specific medical benefits. Second, the Board notes that appellant's claim for a recurrence of disability was not denied because her case had been administratively closed. Board precedent provides that an employee has the burden of proof to establish a claimed period of recurrence of disability¹³ and, for the reasons explained above, appellant failed to meet that burden.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish a recurrence of disability on or after August 25, 2014 due to her accepted work-related emotional condition.

ORDER

IT IS HEREBY ORDERED THAT the January 23, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 16, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹³ See *supra* notes 6 and 7.